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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/900,596	07/06/2001	Vincent Pavis	1112-102.US	4105

23390 7590 05/13/2003  
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EXAMINER

WEBMAN, EDWARD J

ART UNIT	PAPER NUMBER
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1617

DATE MAILED: 05/13/2003

7

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/900596

Applicant(s)

PAVLIS

Examiner

WEBMAN

Group Art Unit

1617

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

## Status

- ☒ Responsive to communication(s) filed on 8/3/02
- ☒ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- ☒ Claim(s) 1-30 is/are pending in the application.
- ☐ Of the above claim(s) 13, 15, 25-30 is/are withdrawn from consideration.
- ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- ☒ Claim(s) 1-3, 5-12, 14, 16-23 is/are rejected.
- ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- ☐ Claim(s) \_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
  - ☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been received.
  - ☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_.
  - ☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

## Attachment(s)

- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_
- ☐ Interview Summary, PTO-413
- ☐ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Other \_\_\_\_\_

Office Action Summary

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The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3, 5-12, 14, 16-18, 20-21, 23, 24 are rejected under 35 U.S.C. 102(b) as being anticipated by Tellier et al. (US Patent No. 4,460,692).

Tellier et al. teach a microemulsion (title, and abstract). Mixed oils, including mineral oil, are specified (column 3, lines 63-64). Water in oil emulsions are disclosed (column 3, line 20). Droplet sizes of 80 and 100 Angstroms are specified (column 2, lines 38-40; and claim 20). Culturing microorganisms is specified (abstract). 28% to 36.8% oleic acid, 13.8% to 19.2% water, and 13.8% to 15.7% urea are disclosed (claim 19). The butylether of ethylene glycol at 7.5% is specified (Table 1). C<sub>6</sub>-C<sub>12</sub> alcohols and polyolesters are specified as equivalent to polyolethers (column 3 lines 51-55).

As to the claimed properties, including the now claimed viscosity and stability, <sup>the anticipatory composition must</sup> possess them because it is the same composition as that claimed.

Applicants argue that all of the examples in Tellier et al specify the butyl ether of ethylene glycol. However, the teaching of ~~are~~ <sup>are</sup> a reference not limited by its examples.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, 5, 8, 11, 12, 16-23 are rejected under 35 U.S.C. 102(b) as being anticipated by Freiesleben (US Patent No. 5,171,475).

Freiesleben teaches water in oil microemulsions (title; abstract; column 4, line 20). Organic solvents comprising 2-(2-butoxyethoxy) ethanol are disclosed (claim 6). Compounds containing nitrogen are specified (Table 2). Waxes are disclosed (Table 1). 30% butyl carbitol is specified (Table 3).

As to the claimed properties, the anticipatory compositions must possess them because it is the same composition as that claimed.

2d  
9/4/03  
Applicant's argument that the nitrogen containing compounds are not sources of nitrogen for microorganisms is mere opinion. Applicants claimed utility is merely and intended use.

No claims allowed.

The examiner requests the OSHA exposure list cited on page 6 lines 5-6 of the specification. The examiner also requests a copy of the definition of "non-toxic" in section 313 Title III of SARA cited on page 18 lines 7, 24.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

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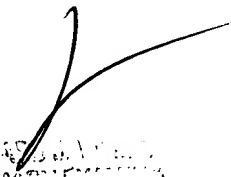
extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Edward Webman whose telephone number is (703) 308-4432. The examiner can normally be reached on Monday to Friday 9 Am 5 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, S. Padmanabhan can be reached on (703) 305-1877. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 305-3592 for regular communications and (703) 305-3592 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1235.

Webman/LR  
April 22, 2003



EDWARD WEBMAN  
Examiner  
Art Unit 1617